



## **PLEASE NOTE**

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This document is *not* the official version of these regulations. The regulations and the amendments printed in the [Royal Gazette](#) should be consulted to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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## CHAPTER P-32

### PUBLIC PURCHASING ACT

#### REGULATIONS

Pursuant to section 7 of the *Public Purchasing Act* R.S.P.E.I. 1988, Cap. P-32, Council made the following regulations:

#### APPLICATION

1. The Act and these regulations apply to the departments set out in the Schedule. (EC43/85) Application

#### DEFINITIONS

- 1.1. In these regulations Definitions
- (a) “local purchase order” means a local purchase order from a book of local purchase orders issued by the Division under section 9(1)(a); local purchase order
- (b) “purchasing card” means a purchasing card as issued by the Division under clause 9(1)(a); (EC691/03) purchasing card

#### REQUISITIONING SUPPLIES

2. (1) A department shall notify the Comptroller of any requirement by completing a purchase requisition that shall contain the information required by the Comptroller. Purchase requisition
- (2) The purchase requisition shall be approved by a signing officer of the department authorized by the Minister thereof. Signature
- (3) The Division, following receipt of competitive tenders, may make agreements with vendors for delivery of supplies on an “as and when required” basis for periods of not more than 24 months, unless an additional period is authorized by the Minister. Agreements for supplies
- (3.1) Subsection (3) does not apply to the delivery of supplies that are subject to a prior agreement approved by the Minister. Exception
- (4) The Division may allow specified departments or divisions to obtain supplies directly from the vendor designated by the Division at prices established by the Division. (EC43/85; 140/90; 691/03) Direct purchase

## VENDORS' LIST

Compilation of vendors' list	<b>3.</b> (1) The Division shall maintain a vendors' list by type of supplies of all vendors who make representation to the Division by completing the vendors' registration form, and who comply with the requirements set out in the Act and these regulations.
<i>Idem</i>	(2) The vendor's name shall be placed on the vendors' list within thirty days after the time a vendor meets the requirements of the Act and these regulations.
Ability to provide supplies	(3) A vendor shall provide to the Division proof of the vendor's ability to provide the particular supplies before the vendor's name is added to vendors' list.
<i>Idem</i>	(4) Proof of ability under subsection (3) shall be measured by such predetermined standards and specifications as are established by the Division from time to time, including evidence that the vendor can supply the required volumes within the required time or a time reasonable in the circumstances.
Inspection of lists	(5) Vendors' lists for specific supplies shall be available for public inspection but shall not include information on a vendor considered confidential by the Division.
Inspection of tenders	(6) A list of tenders both publicly advertised and invited shall be maintained and made available for public inspection for thirty days following tender closing.
Descriptions	(7) Any vendor shall be entitled to be informed upon request as to how the vendor's supplies or capabilities are described on the vendors' list.
Agents	(8) A vendor may register an agent pursuant to clause (4)(1)(i) of the Act by giving notice to the Division of the name and address of the agent and the supplies offered by the agency and the Division shall maintain for public scrutiny a listing of all agents.
Changes to be notified	(9) Vendors shall inform the Division in writing of any changes in agents within thirty days of such changes. (EC43/85; 140/90; 691/03)

## REMOVAL FROM VENDORS' LIST

Removal	<b>4.</b> (1) The Division shall remove the name of any vendor from a vendors' list whenever <ul style="list-style-type: none"> <li>(a) the vendor requests removal;</li> <li>(b) the vendor is declared bankrupt or suffers a substantial business failure;</li> </ul>
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- (c) the vendor ceased to supply the type of supplies for which the vendor was placed on a vendors' list; or
- (d) the vendor suffers fire or other disaster which renders the enterprise of the vendor inoperable for an extended period.

(2) The Division may remove the name of a vendor from a vendors' list for cause; the following constitute cause: Removal for cause

- (a) non-performance on a current contract;
- (b) a history of failure to respond to invitations to tender;
- (c) failure to meet quality standards and specifications established by the Division;
- (d) failure to follow the conditions respecting the registering of agents;
- (e) failure to meet delivery commitments;
- (f) a history of failure to submit competitive prices;
- (g) failure to comply with the Act or these regulations.

(3) A history of failure in clauses (2)(b) and (f) shall be determined on the basis of not less than three consecutive tenders. Failure

(4) When a vendor is removed from the vendors' list the vendor shall be notified in writing by the Division of the removal and the reason for the removal. (EC43/85; 140/90; 691/03) Notice of removal

#### REINSTATEMENT TO VENDORS' LIST

5. (1) Following removal of a vendor's name from a vendors' list, the vendor may be reinstated by providing sufficient evidence to the Division that the causes leading to removal have been rectified. Reinstatement

(2) A vendor whose name has been removed from the list is entitled, upon request, to have the removal reviewed at the end of a three-month waiting period and shall be reinstated unless there is persuasive evidence that the causes of the removal have not been rectified. Review

(3) If the vendor is not reinstated to the vendors' list after a review under subsection (2), the vendor may, by written request to the Division every six months after the vendor's removal from the list, have the case reviewed under subsection (2). Six-month reviews

(4) Reinstatement of a vendor who has been twice removed from the vendors' list shall be at the discretion of the Division following a six-month waiting period. Reinstatement after second removal

(5) If the vendor feels the action taken by the Division has been unjustified, the vendor may appeal in writing to the Provincial Treasurer by notice stating the grounds upon which the vendor alleges the removal Appeal

of the vendor's name to be unjustified. (EC43/85; 484/86; 140/90; 639/93; 691/03)

### SELECTION OF TENDERS

After-sales service specifications	<b>6.</b> (1) The Division may include specifications describing after-sales service and response times in an invitation to tender or bid for supplies for which after-sales service is required.
Tenders over \$5,000	(2) For the purposes of clause 4(1)(a) of the Act tenders shall be requested from a minimum of three vendors on the vendors' list for all purchases of value in excess of \$5,000.
Quotes between \$1,500 and \$5,000	(2.1) For purchases costing between \$1,500 and \$5,000, a department shall obtain quotations by telephone or other method from at least two vendors.
Evidence of quotations	(2.2) Where a department has obtained quotations pursuant to subsection (2.1), the department shall provide evidence satisfactory to the Division that the department has complied with the requirements of subsection (2.1).
Rules for tenders	(3) Tenders shall be called in accordance with the following rules: <ul style="list-style-type: none"> <li>(a) revoked by EC691/03;</li> <li>(b) revoked by EC691/03;</li> <li>(c) the successful bidder on the last tender for particular supplies <ul style="list-style-type: none"> <li>(i) shall be included in the next list of vendors invited to tender or bid for those particular supplies, and</li> <li>(ii) shall be notified by the Division by telephone or facsimile of the next tender;</li> </ul> </li> <li>(d) whenever a qualified vendor insists on an opportunity to bid on a particular tender on which the vendor has not been invited to tender or bid, the vendor shall be given that opportunity if the opportunity to do so does not require cancellation of the existing invitation to tender or bid;</li> <li>(e) except where urgency precludes the issuance of a written solicitation by mail, all tenders shall be solicited in writing on an approved invitation to tender form or by public advertisement.</li> <li>(f) where urgency precludes the formal written solicitation of bids, tenders may be called by telephone or other means; and in such instances, the official responsible for such solicitations shall ensure that adequate records of solicitation and bids be placed on the applicable purchase file to support the action taken and all bids solicited in this manner must be confirmed in writing;</li> <li>(g) except in cases of extreme urgency, which in the opinion of the Minister constitute an emergency, no contract shall be awarded via</li> </ul>

the telephone; and in such instances as constitute an emergency, there shall be documentation of the emergency; the official responsible for verbal solicitations shall ensure that adequate records of solicitation and bids be placed on the applicable purchase file to support the action taken as well as documentation of the Minister's opinion that an emergency exists;

(h) in the solicitation of bids, where the estimated value of the supplies is less than \$25,000, priority will be given in the following order:

- (i) Prince Edward Island manufacturers or producers,
- (ii) Prince Edward Island companies acting as distributors for Canadian manufacturers or warehousemen,
- (iii) Atlantic Canadian manufacturers, producers or distributors,
- (iv) Canadian manufacturers, producers or distributors,
- (v) all others,

and when the department or Division determines that there is a sufficient number of sources of supply to establish a competition, the solicitation of tenders may be restricted to the persons referred to in subclauses (i) and (ii).

(4) For the purposes of clause 4(1)(e) of the Act all purchases of supplies valued at \$5,000 or more shall be advertised publicly. Advertised publicly

(4.1) Public advertising of an invitation to tender or bid may include publication of notice of the invitation to tender or bid Manner of public advertising of tender

- (a) in at least one daily newspaper published in the province; or
- (b) by electronic means accessible to vendors. (EC43/85; 140/90; 691/03)

(5) Revoked by EC691/03. Indexing

## TENDERING PROCEDURES

7. (1) The Division shall ensure that all vendors invited to tender are provided with the same information for submission of bids and that the information provided is adequate for the submission of bids. Information to vendors

(2) Each vendor invited to tender shall be provided with tender information, which shall include the tender description, tender number, tender closing date and the time and the location where tenders will be received. Tender information

(3) Tenders received by the Division will be dated and time stamped by the Division. Tenders, date and time

(4) Tenders shall close at noon each day and tenders shall be opened publicly the afternoon of the same day upon which tenders have closed; Closing

Attendance at openings	(5) Attendance at tender openings shall be restricted to vendors who have submitted bids and others who demonstrate, in advance, a legitimate interest in the tender opening.
Openings	(6) At the tender opening the official designated by the Minister shall open the tender envelopes and read the vendors' names and total prices quoted.
No decision at tender opening	(6.1) No decision or award shall be made at the time of the tender opening.
Compliance with conditions	(7) If, after subsequent analysis by the official responsible for the supplies being tendered, it is found that the vendor has failed to comply with the conditions outlined on the invitation to tender, the tender shall be rejected forthwith and the vendor advised in writing of the reason for rejection of the tender.
Award	(8) Revoked by EC691/03.
Late tenders	(9) Tenders received later than noon on the tender closing date shall be refused, dated and time stamped, and all documents returned to the sender with a covering letter advising that the tender was received too late to be considered but, if the vendor has preceded the late written quotation with a facsimile message which <ul style="list-style-type: none"> <li>(a) has been received in its entirety prior to tender closing;</li> <li>(b) contains the complete information required on the invitation to tender; and</li> <li>(c) advises that the completed invitation to tender form has been mailed,</li> </ul> the tender shall be accepted.
Extension of time	(10) The Division may extend the tender closing date, at the reasonable request of suppliers or at its own discretion, provided that all of those who were invited to tender are so advised.
Reduction of time	(11) If all vendors invited to bid are in agreement, the tender closing date may be shortened, provided that the vendors concerned are advised of the new closing date.
Absence of information required	(12) All information stipulated in the invitation to tender shall be provided by the vendor; tenders not containing this information may be rejected.
Amendment of tender	(13) A vendor submitting a tender may amend the tender subsequent to the deposit of the tender and prior to the time of closing of the tenders by <ul style="list-style-type: none"> <li>(a) letter or a facsimile message sent by the vendor signing the original tender deposit;</li> </ul>

- (b) the receipt of the letter or a facsimile message by the Division prior to the close of tenders; and
- (c) clearly identifying the tender being amended on the face of the amending letter or a facsimile message with the tender number and the word "Amendment".

(14) An amendment of tender shall not disclose the amended total tender price but shall show *Idem*

- (a) the revision to the bid price to be amended in the case of a unit price contract;
- (b) the amount to be added to or subtracted from the tender price in the case of a lump sum tender; or
- (c) shall supply information that is missing from the tender on deposit.

(15) In these regulations "received" means received in the office of the Division at the location specified in the tender document. (EC43/85; 140/90; 691/03) *Definition of received*

**8.** (1) Following the tender opening, the Division shall prepare a recapitulation document showing all information pertinent to the evaluation of the bids. *Summary of tenders*

(1.1) The Division may ask a vendor to provide the Division with proof of the vendor's ability to provide the particular supplies that are the subject of the invitation to tender before a tender is awarded. *Proof of ability*

(1.2) The Division may establish standards and specifications for proof of ability under subsection (1.1), including evidence that a vendor can provide the required volume of supplies within the time required by the tender or within a time that the Division considers reasonable in the circumstances. *Standards and specifications re: ability*

(2) Following review of the tenders and the recapitulation document, the Comptroller or the Comptroller's designate may recommend or select the successful vendor. *Selection*

(2.1) Where less than two competitive bids meeting the tender's specifications are received, the Comptroller or the Comptroller's designate may choose to cancel the tender. *Cancellation of tender*

(3) The Minister shall designate those officials in the Department of the Provincial Treasury who have authority for the awarding of tenders. *Authorized officials*

(4) No tender on which the price is stated to be in excess of \$25,000 shall be awarded without the approval of the Minister. No tender on *Major tenders, appropriate authority*



which the price is stated to be in excess of \$250,000 shall be awarded without the approval of the Management Board.

*Idem*

(5) If other than the low bid is accepted, approval shall be limited to a difference between the low bid and the successful bid in the case of the Minister, of not more than \$2,500 or 10 per cent, whichever is the lesser and in any other case, the approval of the Management Board shall be obtained.

Purchase order

(6) Following appropriate approval, a purchase order shall be prepared showing all information pertinent to the tender, the purchase order shall be signed by the Director of the Division upon approval of the proper signing authority as in subsections (3) and (4) and the original shall be forwarded to the successful vendor.

Changes

(7) Amendments and changes to purchase orders shall be effected only by the Division and such amendments and changes shall be made only for additions or deletions to the purchase order not covered in the original tender through error or oversight. (EC43/85; 484/86; 140/90; 639/93; 691/03)

#### LOCAL PURCHASE ORDERS

Direct purchases

**9.** (1) For purchases within the province below \$500 departments are exempted from purchasing supplies through the Division subject to the following conditions:

- (a) the Division shall issue a book of local purchase orders or a purchasing card only to departments for use by those persons authorized in writing by the Deputy Minister of the department in which they serve;
- (b) requests for the issue of local purchase orders or purchasing cards shall be subject to approval of the Division;
- (c) if supplies are available under contract, the local purchase order or the purchasing card shall be restricted to items of an urgent or emergency nature;
- (d) the local purchase order or the purchasing card shall be completed so that it provides a description of the item or items purchased, the unit price and the total amount of the purchase order;
- (d.1) in the case of a purchasing card, the transaction shall be completed so that it provides a description of the item or items purchased, the unit price and the total amount purchased with the card;
- (e) following completion of the local purchase order form, the issuer shall ensure that the individual copies are distributed according to the instructions on the form; and

(f) following completion of the book(s) of local purchase orders, the book shall be returned to the department administration office before a new book may be issued.

(2) Revoked by EC140/90. Changes

(3) The departments concerned shall conduct annual audits to ensure Audit  
 (a) the local purchase orders are not being presigned;  
 (b) that local purchase orders are not being used cumulatively for purchase of an item with unit price in excess of \$500; and  
 (c) that local purchase orders are not being used to purchase a number of similar items where a unit price is less than \$500.

(4) The departments shall provide copies of the annual audits to the Comptroller. (EC43/85; 484/86; 581/89; 140/9; 691/03) Copies

#### GENERAL

**10.** (1) All terms and conditions of official purchasing documents shall be considered as being part of these regulations. Documents

(2) The official purchasing documents shall be those documents designated by the Division. (EC43/85) *Idem*

#### EXEMPTIONS

**11.** (1) The following general exemptions are made for all departments: Exemptions  
 (a) the following items:  
     (i) CDs (compact discs),  
     (ii) DVDs (digital video discs),  
     (iii) film,  
     (iv) film strips,  
     (v) pre-recorded tapes,  
     (vi) printed test materials,  
     (vii) recordings,  
     (viii) subscriptions to magazines, newspapers or periodicals,  
     (ix) textbooks,  
     (x) videotapes;  
 (b) revoked by EC691/03;  
 (c) repair parts for road maintenance vehicles and equipment;  
 (d) revoked by EC691/03;  
 (e) revoked by EC691/03;  
 (f) revoked by EC691/03;  
 (g) supplies purchased using the open competitive processes of other public sector organizations;  
 (h) Government automobiles provided to Ministers;

- (i) construction materials that are used for highway construction and maintenance;
- (j) revoked by EC691/03;
- (k) supplies that the Deputy Minister of the requisitioning department considers necessary to be obtained by sole source, as documented by the Deputy Minister, for any of the following reasons:
  - (i) to ensure compatibility with present supplies,
  - (ii) competition is not practical for technical reasons,
  - (iii) the goods or services are controlled by a statutory monopoly,
  - (iv) the goods originate from a commodity market,
  - (v) the work for which the goods or services is being purchased is being done on leased property,
  - (vi) the work is under warranty or a maintenance contract,
  - (vii) the contract is awarded to the winner of a design contest,
  - (viii) for first time purchase of goods or of prototypes, but not for subsequent purchases,
  - (ix) the goods are purchased at exceptionally low prices, such as in a bankruptcy situation,
  - (x) the goods are original works of art,
  - (xi) the goods are real property,
  - (xii) the supplies are not included in the above list but, in the opinion of the Deputy Head of the requisitioning department and the Deputy Provincial Treasurer, the supplies have certain characteristics that can only be provided by one manufacturer or supplier.
- (l) goods or services of a confidential nature;
- (m) revoked by EC691/03;
- (n) goods intended for resale;
- (o) artifacts, related books and plaques for historical projects and buildings;
- (p) revoked by EC691/03;
- (q) emergencies such as acts of God, furnace replacement, building collapse, but not including urgent situations resulting from lack of appropriate planning;
- (r) cooperation agreements where the organization uses different rules from those allowed for in the trade agreements;
- (s) goods or services dealing with situations that compromise security or order;
- (t) in situations where fewer than two competitive bids were received in response to a tender call;
- (u) goods or services acquired for an entity that is not covered by any trade agreement, including entities operating sporting or

convention facilities, commercial entities and others approved by the Division;

(v) procurement from philanthropic organizations, as determined by the Division;

(w) contracts between public bodies or non-profit organizations;

(x) representational goods or services used outside a party's territory;

(y) goods, the interprovincial movement of which are restricted by or inconsistent with a trade agreement.

(2) Documentation satisfactory to the Division must be supplied by the Deputy Minister of the department that intends to purchase goods or services under the exemptions listed in clauses (q) to (y). (EC43/85; 140/90; 691/03)

Exemption  
documentation

**SCHEDULE**

Department of Agriculture and Forestry  
Department of Community and Cultural Affairs  
Department of Development and Technology  
Department of Education  
Department of Fisheries, Aquaculture and Environment  
Department of Health and Social Services  
Department of the Provincial Treasury  
Department of Tourism  
Department of Transportation and Public Works  
Treasury Board  
Executive Council Office  
Office of the Attorney General  
Office of the Auditor General  
Office of the Premier

(EC140/90; 639/93; 699/00)